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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/774,939	02/09/2004	Haim Emil Dahan	09420.0001-00000	8623
22852 7590 01/07/2009 FINNEGAN, HENDERSON, FARABOW, GARRETT & DUNNER LLP 901 NEW YORK AVENUE, NW WASHINGTON, DC 20001-4413			EXAMINER SCHELL, LAURA C	
			ART UNIT 3767	PAPER NUMBER
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/774,939	Applicant(s) DAHAN ET AL.	
	Examiner LAURA C. SCHELL	Art Unit 3767	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 24 October 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-31 and 33-36 is/are pending in the application.
- 4a) Of the above claim(s) 4,5,8,12-15,19,20,23 and 27-30 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-3,6,7,9-11,16-18,21,22,24-26,31 and 33-36 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>10/29/08</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-3, 6, 10 and 11 are rejected under 35 U.S.C. 102(b) as being anticipated by Kron (US Patent No. 3,790,016). Kron discloses a method of measuring fluid flow from a fluid source to a baby's mouth through a nipple (Fig. 6) comprising: providing a feeding pathway (Fig. 6, 24) for fluid flow from the fluid source (27) to the baby's mouth (via 21); and providing an indicator pathway (the indicator pathway is made up of the pathway comprising 73, 74, 75, 65-69) separate from the feeding pathway (it is separate from the feeding pathway in that it has a different pathway and opening/source for the fluid), wherein the indicator pathway has a first opening in communication with the fluid source (opening where 73 meets the bottle) and a second opening in communication with the baby's mouth (where 65 meets fluid pathway 15, this is in fluid communication with 21 which is in fluid communication with the baby's mouth). The examiner thinks it would be helpful to amend the claims to say that the second opening is in direct fluid communication with the baby's mouth as it has a separate opening in the distal end of the nipple, in order to overcome the Kron reference) and wherein the indicator pathway includes at least one intermediate chamber (the pump 74

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can be considered the intermediate chamber) among segments of the indicator pathway, whereby the amount of fluid drawn into the indicator pathway and the at least one intermediate chamber is indicative of the amount of fluid drawn into the feeding pathway (col. 7, line 64 through col. 8, line 25 disclose how the volume of flow that the baby is ingesting through pathway 15 is computed through this pathway in Fig. 6, involving measuring the differential pressures within the pathway of 73, 74, 75 and 65-69).

In reference to claim 2, Kron discloses that the cross-sectional area of the indicator pathway is substantially smaller than the cross-sectional area of the feeding pathway (Fig. 6 discloses that pathway portions 66 and 67 are smaller than 15).

In reference to claim 3, Kron discloses that the length of the indicator pathway is longer than the length of the feeding pathway (Fig. 6).

In reference to claim 6, Kron discloses that the feeding pathway and the indicator pathway are integral to the nipple (Fig. 6).

In reference to claim 10, Kron discloses that the fluid source is a bottle (Fig. 6).

In reference to claim 11, Kron discloses providing a check valve in the indicator pathway to prevent backflow of fluid (col. 5, line 57).

Claims 16-18, 21, 25 and 26 are rejected under 35 U.S.C. 102(b) as being anticipated by Kron (US Patent No. 3,790,016). Kron discloses a method of measuring

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fluid flow from a fluid source to a baby's mouth through a nipple (Fig. 6) comprising: providing a feeding pathway (Fig. 6, 24) for fluid flow from the fluid source (27) to the baby's mouth (via 21), wherein the feeding pathway has a first opening in communication with the fluid source and a second opening in communication with the baby's mouth (Fig. 6); and an indicator pathway (the indicator pathway is made up of the pathway comprising 73, 74, 75, 65-69) separate from the feeding pathway (it is separate from the feeding pathway in that it has a different pathway and opening/source for the fluid), wherein the indicator pathway has a first opening in communication with the fluid source (opening where 73 meets the bottle) and a second opening in communication with the baby's mouth (where 65 meets fluid pathway 15, this is in fluid communication with 21 which is in fluid communication with the baby's mouth. The examiner thinks it would be helpful to amend the claims to say that the second opening is in direct fluid communication with the baby's mouth as it has a separate opening in the distal end of the nipple, in order to overcome the Kron reference), whereby the amount of fluid drawn into the indicator pathway is indicative of the amount of fluid drawn into the feeding pathway (col. 7, line 64 through col. 8, line 25 disclose how the volume of flow that the baby is ingesting through pathway 15 is computed through this pathway in Fig. 6, involving measuring the differential pressures within the pathway of 73, 74, 75 and 65-69).

In reference to claim 17, Kron discloses that the cross-sectional area of the indicator pathway is substantially smaller than the cross-sectional area of the feeding pathway (Fig. 6 discloses that pathway portions 66 and 67 are smaller than 15).

In reference to claim 18, Kron discloses that the length of the indicator pathway is longer than the length of the feeding pathway (Fig. 6).

In reference to claim 21, Kron discloses that the feeding pathway and the indicator pathway are integral to the nipple (Fig. 6).

In reference to claim 25, Kron discloses that the fluid source is a bottle (Fig. 6).

In reference to claim 26, Kron discloses providing a check valve in the indicator pathway to prevent backflow of fluid (col. 5, line 57).

Claims 31, 33 and 36 are rejected under 35 U.S.C. 102(b) as being anticipated by Kron (US Patent No. 3,790,016). Kron discloses a method of indicating suction from a baby's suckling comprising: receiving suction from a baby's mouth (Fig. 6 discloses that 21 receives the suction from the baby's mouth); providing the suction to at least a first pathway (first pathway is made up of 21, 15 and 24) and a second pathway separate from the first pathway (the indicator pathway is made up of the pathway comprising 73, 74, 75, 65-69; it is separate from the feeding pathway in that it has a different pathway and opening/source for the fluid); drawing fluid from a fluid source into the first pathway and the second pathway (Fig. 6 discloses that fluid is drawn into both pathway from fluid source 12); and indicating in the second pathway the presence of suction (col. 7, line 64 through col. 8, line 25 disclose how the volume of flow that the baby is ingesting (which thus indicates suction) through pathway 15 is computed

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through this pathway in Fig. 6, involving measuring the differential pressures within the pathway of 73, 74, 75 and 65-69).

In reference to claim 33, Kron discloses that indication in the second pathway the presence of suction comprises: indicating the presence of suction by the amount of fluid drawn into the second pathway (col. 7, line 64 through col. 8, line 25 disclose how the volume of flow that the baby is ingesting (which thus indicates suction) through pathway 15 is computed through this pathway in Fig. 6, involving measuring the differential pressures within the pathway of 73, 74, 75 and 65-69).

In reference to claim 36, Kron discloses that the amount of fluid drawn into the second pathway is indicative of an amount of fluid drawn into the first pathway (col. 7, line 64 through col. 8, line 25 disclose how the volume of flow that the baby is ingesting (which thus indicates suction) through pathway 15 is computed through this pathway in Fig. 6, involving measuring the differential pressures within the pathway of 73, 74, 75 and 65-69).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 7, 22 and 34 is rejected under 35 U.S.C. 103(a) as being unpatentable over Kron (US Patent No. 3,790,016) in view of Sklar (US Patent No. 5,263,599). Kron discloses the method substantially as claimed except for gradations along the fluid pathway. Sklar, however, discloses a fluid pathway (fluid flowing out of reservoir 4 flows through the length of the bottle) and gradations along this pathway to indicate the amount of fluid drawn out (gradations 18). Therefore it would have been obvious to one of ordinary skill in the art at the time of the invention to have modified Kron with the gradations, as taught by Sklar, in order to provide a device that has visible markings for easily tracking the volume of fluid flow.

Claims 9 and 24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kron (US Patent No. 3,790,016) in view of Rosenfeld (US Patent No. 5,827,191). Kron discloses the device substantially as claimed except for the feeding and indicator pathways being adapted to receive the breast milk from a mother's breast. Rosenfeld, however, discloses a similar device which measures the amount of fluid that a baby is

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ingesting with the fluid coming directly from the mother's breast (Figs. 2-5). Therefore it would have been obvious to one of ordinary skill in the art at the time of the invention to have modified Kron by applying the measuring pathways to a breast shield, as taught by Rosenfeld, in order to be able to measure how much milk a breastfeeding baby is ingesting each time it breastfeeds.

Claim 35 is rejected under 35 U.S.C. 103(a) as being unpatentable over Kron (US Patent No. 3,790,016) in view of Bommarito et al. (US Patent No. 6,741,523). Rosenfeld discloses the device substantially as claimed except for a color code in the fluid pathway to indicate presence of fluid. Bommarito, however, discloses color codes for fluid pathways to indicate the presence of fluid in the pathways (col. 27, lines 32-35). Therefore it would have been obvious to one of ordinary skill in the art at the time of the invention to have modified Kron with the color-coded fluid presence indicator, as taught by Bommarito, in order to provide a device with multiple indicators that are easily read and understood by the average individual.

Response to Arguments

Applicant's arguments with respect to claims 1-3, 6, 7, 9-11, 16-18, 21, 22, 24-26, 31-36 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to LAURA C. SCHELL whose telephone number is (571)272-7881. The examiner can normally be reached on Monday-Friday 9am-5:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kevin Simons can be reached on (571) 272-4965. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Laura C Schell/
Examiner, Art Unit 3767

/Nicholas D Lucchesi/
Supervisory Patent Examiner, Art Unit 3763